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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of

Promotion of Competitive Networks
in Local Telecommunications Markets

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)
) WT Docket No. 99-217
)
)

COMMENTS OF WINSTAR COMMUNICATIONS, INC.

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Table of Contents

	<u>Page</u>
I. INTRODUCTION AND SUMMARY.....	1
II. WHILE INDICATIONS OF POSSIBLE INDUSTRY SOLUTIONS TO THE PROBLEM OF MTE CUSTOMER ACCESS ARE ENCOURAGING, CONTINUED COMMISSION INVOLVEMENT IS NECESSARY.....	2
III. THE RESOLUTION OF THE BUILDING ACCESS PROBLEM IS CRUCIAL TO THE DEVELOPMENT OF FACILITIES-BASED COMPETITION.....	6
IV. CONCLUSION.....	8

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Winstar Communications, Inc. ("Winstar"), by its attorneys, hereby submits these
Comments in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY.

The fundamental principle of the Telecommunications Act of 1996 ("1996 Act") was to provide consumers with competitive choices for telecommunications services. The 1996 Act has permitted the entrance of competitors; however, it is evident that effective local competition will not occur under a resale or an unbundled network element model. Rather, effective competition will be ushered in only by true facilities-based carriers. However, facilities-based carriers have encountered difficulties in reaching, in a timely manner, a significant portion of consumers who live and work in multi-tenant environments ("MTEs"). These problems have hampered the growth of facilities-based carriers, and as a result, effective competition for consumers. Therefore, the FCC must seize this opportunity to support the full development of facilities-based competition as intended by the 1996 Act.

¹ In re Promotion of Competitive Networks in Local Telecommunications Markets, WT Docket No. 99-217, *First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57*, FCC 00-366 (rel. Oct. 25, 2000) ("Competitive Networks First R&O and FNPRM").

Winstar is a nationwide, facilities-based, competitive fixed wireless carrier with FCC licenses in a number of bands, including the 28/31 GHz ("LMDS") and 38.6-40.0 GHz ("39 GHz") bands. Winstar has concentrated on building a national broadband network to provide facilities-based broadband communications services to consumers throughout the United States. Winstar's broadband services include local and long distance, data, voice and video services, as well as high speed Internet and information services. It provides these services through a variety of technologies, including its fixed wireless systems in the LMDS and 39 GHz bands. Winstar is in the process of connecting its local broadband networks via a national end-to-end fiber network, creating a fully facilities-based network that can operate as a true alternative to the incumbents' networks.

Winstar is filing these comments in order to highlight two issues that are of particular importance to advancing facilities-based competition: the need for continued Commission involvement as facilities-based providers and building owners explore industry resolutions of the building access issues and the importance of ensuring competitive access to MTE tenants.

II. WHILE INDICATIONS OF POSSIBLE INDUSTRY SOLUTIONS TO THE PROBLEM OF MTE CUSTOMER ACCESS ARE ENCOURAGING, CONTINUED COMMISSION INVOLVEMENT IS NECESSARY.

Winstar applauds the efforts of the Real Access Alliance ("RAA"), and its members, who are among the acknowledged leaders in the real estate industry, to develop a Model Agreement of access to MTE customers and to develop appropriate industry standards for how MTE owners should respond to access requests from carriers and how MTE owners should treat carriers operating in these environments. The draft Model Agreement proposed by the RAA for MTE owners and managers to use for telecommunications access arrangements is a step in the right direction in promoting facilities-based competition. The discussions surrounding the draft Model

Agreement have been instructive and constructive for those involved. Members of the RAA and telecommunications carriers have exchanged comments on the draft Model Agreement in their attempt to address the problems faced by carriers seeking access to MTE customers. As a result of these discussions, the RAA has indicated its intention to address a number of the concerns and comments of telecommunications carriers that it believes are appropriate. This is an encouraging development, and Winstar plans an active role in the hope that a cooperative process surrounding the drafting and revision of the Model Agreement and good faith efforts by the RAA and its members will produce positive results.

Winstar also encourages the RAA to continue efforts to develop a neutral third-party clearinghouse that could develop, implement, and enforce standards of reasonable behavior by property owners, and could serve building owners, telecommunications carriers, and tenants as a forum for publication and consideration of allegations of practices inconsistent with the real estate industry's commitments. Winstar also believes that a neutral third-party clearinghouse should serve to collect and disseminate information regarding MTE customer access so that such information is readily accessible to tenants, the real estate industry, telecommunications carriers, state public service commissions, and the FCC. Additionally, Winstar encourages the RAA and the real estate industry to develop appropriate standards for informing tenants on a periodic basis about all telecommunications carrier choices existing in the building. For example, the names of the telecommunications carriers to whom the building owner has allowed access can be conveyed to tenants by permanently posting current information in the building and including it in regular written communications to the building's tenants.

Winstar will continue to participate actively and in good faith in the efforts to develop and implement the Model Agreement and associated standards. If this process is completed and the draft Model Agreement is acceptable to RAA members and telecommunications carriers

alike, the agreement will be available as a useful tool for carriers and MTE owners and managers to use during negotiations. Nevertheless, a legitimate concern of telecommunications carriers remains that, even if a useful Model Agreement can be mutually agreed upon by RAA members and carriers, its utility may be very limited.

First, the RAA, and its members, represent a very small percentage of the real estate industry. In fact, the vast majority of property owners in the United States are not members of the RAA. As such, the RAA's efforts, while commendable, are necessarily limited in their utility with the remaining 90 percent or more of the industry not represented by the RAA.

Second, even if the RAA incorporates some portion of carriers' comments, the Model Agreement is likely to remain a one-sided form and clearly will have no binding effect on MTE owners and managers. Indeed, there is no guarantee that all or even a majority of the members of the RAA will use the Model Agreement, much less that the great majority of the real estate industry that is not represented by the RAA will even consider using the Model Agreement.

Third, the Model Agreement does not address, and building owners and carriers would still have to negotiate, certain significant terms and conditions for access, including access rates and time frames for access. If these critical terms are unreasonably discriminatory to new entrants, or are not commercially reasonable and cost-based, access to tenants in MTEs will continue to be delayed and realistic consumer choice impeded.

Finally, if the negotiation time frame for access remains lengthy, as it often is today, any beneficial effects the RAA and its members have had in trying to lead their industry in the adoption of reasonable processes for providing access may go unrealized. As a result, tenants will remain frustrated by the lengthy time periods they must wait before they are able to receive

their preferred carrier's services.² As the market demonstrates today, long lead times in service provisioning serve only to negate consumer interest in receiving competitive carriers' services, and remain the primary barrier to the full realization of facilities-based competition. In the end, the RAA's Model Agreement and suggested standards of practice are unlikely to resolve all of the access problems confronted by consumers and carriers. Thus, as regulators in Connecticut and Texas have done, it is imperative that the Commission assume a role in addressing and resolving such problems.

The adoption by the Commission of a nondiscriminatory access rule and complaint process as proposed by the SBPP will give MTE owners and managers the necessary incentives to cooperate in the negotiation of access agreements with carriers and will allow the Commission to intervene when required. The FCC's rules must operate to ensure that carriers receive cost-based access to customers in MTEs in a timely manner when they request such access. In the majority of cases, it takes many months for carriers to negotiate access, and then up to 30 days or more for a carrier to install intra-building infrastructure necessary to actually provide service to end users. As experience demonstrates, tenants seeking to use a competitive carrier do not want to wait weeks, much less months for service.

Given the absence of overwhelming and continuing evidence that the real estate industry in general is embracing cooperative processes, including but not limited to, those committed to by the RAA to ensure timely access and customer choice, the FCC's rules should require MTE

² When tenants request a carrier's service, they typically want service to begin immediately. A tenant does not want to wait two or three weeks for service. The longer tenants have to wait, the more frustrated they become, and they may cancel the service requested. Thus, delay in access is a barrier to competition. Moreover, tenants do not want to be put in the position of expending energy to advocate to the landlord for carrier access. The tenant simply wants competitive service, not hurdles. Thus, as discussed further below, the FCC should require MTE owners and managers to negotiate access with facilities-based carriers whether or not a tenant has requested service.

owners and managers to negotiate building access with facilities-based carriers upon their request. Winstar believes that it is reasonable to hold carriers and MTE owners and managers to a 30-day negotiation period for access, with actual access to the premises ensured within a timeframe of no more than 30 days after agreement has been reached. Winstar also believes that MTE owners and managers should have an affirmative obligation to specify in writing the reasons for failure to permit access if an agreement cannot be reached by the end of the 30-day negotiating period.

III. THE RESOLUTION OF THE BUILDING ACCESS PROBLEM IS CRUCIAL TO THE DEVELOPMENT OF FACILITIES-BASED COMPETITION.

In the 1996 Act, Congress contemplated competitive entry by three means: resale of the ILEC networks; use of unbundled network elements of the ILECs; and use of competitors own facilities.³ The Commission has “recognized that the greatest long-term benefits to consumers will arise out of competition by entities using their own facilities.”⁴ The Commission also has acknowledged that “[b]ecause facilities-based competitors are less dependent than other new entrants on the incumbents’ networks, they have the greatest ability and incentive to offer innovative technologies and service options to consumers.”⁵ The market, too, has recognized that true facilities-based service providers bring the greatest value and benefit to consumers, but are able to sidestep the majority of the difficulties that UNE-based and resale providers experience as a result of their dependence on the ILECs and ILEC facilities. However, without access to customers in MTEs, facilities-based carriers’ growth will be impeded as will real alternatives for communication choices to those customers.

³ See 47 U.S.C. § 251(c)(2)-(4).

⁴ *Competitive Networks First R&O and FNPRM* at ¶ 4.

⁵ Id.

Over the last five years, the Commission has undertaken numerous proceedings, issued dozens of orders, and expended substantial effort to ensure that UNE-based providers can compete effectively with incumbents. Indeed, proceedings related to collocation, unbundling, and interconnection continue to this day to occupy much of the Commission's time and make substantial demands on its resources. Moreover, the provisioning problems and service issues related to UNE-based competition are likely to linger for many more years. As noted above, the Commission has acknowledged the greater opportunity provided by facilities-based competitors to provide real competition and technological advances beneficial to consumers. This proceeding provides the Commission with a singular opportunity to ensure that the primary barrier to facilities-based competition (timely access to customers) is eliminated.

IV. CONCLUSION.

Winstar respectfully requests that the Commission take the actions outlined herein.

Respectfully submitted,

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January 22, 2001

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